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PART 2

GUIDELINES ON SEPARATION AND SUSPENSION OF SEPARATION

A. Separation

1. Scope. This general guidance applies when referenced in part 1. Further guidance is set forth under the specific reason for separation in part 1.

2. Guidance

a. There is a substantial investment in the training of persons enlisted or inducted into the naval service. As a general matter, reasonable effort at rehabilitation should be made prior to initiation of separation proceedings.

b. The potential for rehabilitation and further useful naval service shall be considered by the separation authority and, where applicable, the Administrative Board. If separation is warranted despite the potential for rehabilitation, consideration should be given to suspension of the separation, if authorized.

c. Counseling and rehabilitation efforts are a prerequisite to initiation of separation proceedings only insofar as expressly set forth under specific requirements for separation in part 1. An alleged or established inadequacy in previous rehabilitative efforts does not provide a legal bar to separation.

d. The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:

(1) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the servicemember's continued retention on military discipline, good order, and morale.

(2) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.

(3) The likelihood that the servicemember will be a disruptive or undesirable influence in present or future duty assignments.

(4) The ability of the servicemember to perform duties effectively in the present and in the future, including potential for advancement or leadership.

(5) The servicemember's rehabilitative potential.

(6) The servicemember's entire military record.

(a) This may include:

1. Past contributions to the Service, assignments, awards and decorations, evaluation ratings, and letters of commendation;

2. Letters of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities; and

3. Any other matter deemed relevant by the board, if any, or the separation authority, based upon the specialized training, duties, and experience of persons entrusted by this instruction with recommendations and decisions on the issue of separation or retention.

(b) The following guidance applies to consideration of matter under subsection A2d(6)(a):

1. Adverse matter from a prior enlistment or period of military service, such as records of nonjudicial punishment and convictions by court-martial, may be considered only when such records would have a direct and strong probative value in determining whether separation is appropriate. The use of such records ordinarily shall be limited to those cases involving patterns of conduct manifested over an extended period of time.

2. Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

e. A servicemember being considered for administrative separation processing who is Fleet Reserve/retired list eligible will, at his or her request, be allowed to transfer to the Fleet Reserve/retired list prior to initiating administrative separation processing. If the member declines to transfer to the Fleet Reserve/retired list, the convening authority shall proceed

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with administrative separation processing. If the member does elect, and does transfer to the Fleet Reserve/retired list, he or she may not be recalled to active duty except with the review and approval of the Chief of Naval Personnel or the Commandant of the Marine Corps.

3. Limitations on Separation Actions. A member may not be separated on the basis of the following:

a. Conduct that has been the subject of judicial proceedings resulting in the acquittal or action having the effect thereof except in the following circumstances:

(1) When such action is based upon a judicial determination not going to the guilt or innocence of the respondent; or

(2) When the judicial proceeding was conducted in a State or foreign court and the separation is approved by the Secretary of the Navy; or

(3) When the acquittal from the judicial proceedings was based on a finding of not guilty only by reason of lack of mental responsibility. Servicemembers in this category normally shall be separated under Secretarial Plenary Authority (section P of part 1) unless separation for Disability (section D of part 1) is appropriate.

b. Conduct that has been the subject of a prior Administrative Board in which the Board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct except when the conduct is the subject of a rehearing ordered on the basis of fraud or collusion; or

c. Conduct that has been the subject of an administrative separation proceeding resulting in a final determination by a separation authority that the servicemember should be retained, except in the following circumstances:

(1) When there is subsequent conduct or performance forming the basis, in whole or in part, for a new proceeding;

(2) When there is new or newly discovered evidence that was not reasonably available at the time of the prior proceeding; or

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(3) When the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

B. Suspension of Separation

1. Suspension

a. Unless prohibited by this instruction, a separation may be suspended for a specified period of not more than 12 months by the separation authority or higher authority if the circumstances of the case indicate a reasonable likelihood of rehabilitation.

b. During the period of suspension, the servicemember shall be afforded an opportunity to meet appropriate standards of conduct and duty performance.

c. Unless sooner vacated or remitted, execution of the approved separation shall be remitted upon completion of the probationary period, upon termination of the servicemember's enlistment or period of obligated service, or upon decision of the separation authority that the goal of rehabilitation has been achieved.

2. Action During the Period of Suspension

a. During the period of suspension, if there are further grounds for separation under part 1, one or more of the following actions may be taken:

(1) Disciplinary action;

(2) New administrative action; or

(3) Vacation of the suspension accompanied by execution of the separation if the servicemember engages in conduct similar to that for which separation was approved (but suspended) or otherwise fails to meet appropriate standards of conduct and duty performance.

b. Prior to vacation of a suspension, the member shall be notified in writing of the basis for the action and shall be afforded the opportunity to consult with counsel (as provided in subsection B1f of part 4) and to submit a statement in writing to the separation authority. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to

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act on the notice. If the respondent identifies specific legal issues for consideration by the separation authority, the matter shall be reviewed by a judge advocate or civilian lawyer employed by the government prior to final action by the separation authority.